IIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1383 of 2007

Nandagopal .. Petitioner

Vs.

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai
   Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.C.V.Illangovan
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R
(Made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu Bolu @ Balakrishnan, son of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 17.7.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.2146 of 2007 on the file of Tambaram Police Station for the offences punishable under Sections 147, 148, 341, 336, 392 and 506(2) IPC, complaint of which was

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given by one Sabu. On 23.6.2007, when the complainant was proceeding to meet his friend in his cycle, the detenu and his associates suddenly surrounded him and demanded money. When the detenu and his associates took out knives and threatened the complainant, he raised hue and cry. The detenu and his associates forcibly took away Rs.3000/- from the pant pocket of the complainant. The complainant raised alarm and on hearing the same, the nearby public came to his rescue. The accused picked up stones and pelted the same against them. The public seeing the atrocious activities of the detenu ran for safer places out of fear of danger. Taking advantage of the panic situation, the detenu and his associates escaped from the spot. Based on the complaint, the case was taken up for investigation and the detenu was arrested.

2.2. Apart from the above, the detaining authority also took note of an adverse case pending against the detenu, viz., Crime No.1541 of 2007 on the file of Tambaram Police Station for the offence punishable under Section 302 IPC.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

3. Challenging the abovesaid detention, the petitioner has come forward with the present petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed against the detenu by the second respondent in Memo No.340/BDFGISSV/2007, dated 17.7.2007, set aside the same and to direct the respondents to produce him, who is now detained at Central Prison, Puzhal, before this Court and set him at liberty.

4. Heard Mr.C.V.Illangovan, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents. We have perused the materials produced before us.

5. The main contention of the learned counsel for the petitioner is that in the grounds of detention, the detaining authority has observed that the detenu is in remand in connection with the ground case and has moved a bail application in Crl.M.P.No.2674 of 2007 before the Judicial Magistrate, Tambaram and the same is pending and in the Special Report dated 14.7.2007 (page 96 of the booklet), also the sponsoring authority has stated that the said bail application is pending, whereas in the certified copy of the bail order in Crl.M.P.No.2674 of 2007, it is stated that the bail application is dismissed on 5.7.2007 even before passing of the detention order and therefore, the impugned order of detention is vitiated for non application of mind on the part of the detaining authority.

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6. Concededly, in the order of detention, the detaining authority has observed that the detenu is in remand in connection with the ground case and he has moved a bail application before the learned Judicial Magistrate, Tambaram and the same is pending. In the special report dated 14.7.2007 of the sponsoring authority also, it is stated that the detenu is in remand and the bail application is also pending. However, the fact remains that the bail application of the detenu in Crl.M.P.No.2674 of 2007 was dismissed by the learned Judicial Magistrate, Tambaram on 5.7.2007 itself, as evident from the certified copy produced by the learned counsel for the petitioner. The above fact which went unnoticed by the detaining authority reflects his non application of mind.

For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other crime. No costs.

ATR

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-9.

2. The Commissioner of Police
   Greater Chennai
   Chennai 600 008.

3. The Superintendent
   Central Prison
   Puzhal, Chennai.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government of Tamil Nadu,
   Public (Law & Order) Department,
   Fort St George, Chennai-9.

NG(CO)
DCP/7.1

HCP No.1383 of 2007.

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